IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE K.R.UDAYABHANU

WEDNESDAY, THE 19TH SEPTEMBER 2007 / 28TH BHADRA 1929

CRL.A.No. 1050 of 2001()

CC.107/1999 of CHIEF JUDICIAL MAGISTRATE COURT, KOTTAYAM

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APPELLANT: COMPLAINANT

SAJI.V.ITTY
S/O.ITTY
VETTATHU HOUSE, PUTHUPPALLY P.O.
PUTHUPALLY VILLAGE
KOTTAYAM TALUK.

BY ADV. SRI.BECHU KURIAN THOMAS

RESPONDENT: ACCUSED

GEORGE IPE, S/O.IPE
MODIYIL HOUSE
MALLAPPALLY P.O.
OPPOSITE KSEB OFFICE, MALAPPALLY
CHANGANACHERRY TALUK.

BY ADV. SRI.B.SAINU
BY PUBLIC PROSECUTOR SRI.

THIS CRIMINAL APPEAL HAVING BEEN FINALLY HEARD ON 19/09/2007, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

K.R.UDAYABHANU, J

Crl.A.No.1050 of 2001

Dated this the 19th day of September, 2007

JUDGMENT

The appellant is the complainant in the proceedings initiated under Section 138 of the Negotiable Instruments Act in which the accused has been acquitted.

2. It is the case of the complainant/appellant that on 5.10.1998 the impugned cheque for Rs.73,215/- was issued by the accused towards discharge of debt due to the complainant and that the same when presented got dishonoured for want of funds in the account of the accused. The lawyer notice sent demanding payment was not replied to.

3. The evidence adduced in the matter consisted of the testimony of PW1 and Exts. P1 to P7. The defence got examined DW1 and marked Exts. D1 to D13.

4. PW1, the complainant has testified in proof of the execution of the cheque. He has also proved the documents in support that included the dishonour memo, intimation, lawyer notice, postal acknowledgment and ledger extract. The defence

case put in the cross examination of PW1 is that the complainant was running a financial institution by name Vettom Bankers and that in the chitty run by the above institution, the father of the accused was a subscriber and the accused as guarantor for the chitty bid by the father of the accused he issued the blank cheque to the complainant's institution. PW1 has denied the suggestion that he is conducting any chitty business. According to him, he provided the loan to the accused as he is a neighbour. Although, not stated by PW1 when DW2, the accused was examined the suggestion is that the amount was given to PW1 in 3 instalments.

5. In order to prove the evidence of PW1, the defence examined DWs' 1 to 5 including DW2, the accused and DW5, the father of the accused. DW1 is one Father Kurian who has stated that it was at his instance that the accused was persuaded to issue the cheque as guarantee to the Vettom Bankers. He has stated that he happened to see the father of the accused quarreling with the accused as he was not amenable to issue the cheque and that he managed to get the cheque from the accused and gave it to the father of the accused.

DW4 is the independent witness who was examined to prove that the Vettom Bankers are conducting the chitty. He has produced Ext. D5 series receipts and Ext. D6 calendar of Vettom Bankers. As pointed out by the counsel for the appellant Ext. D5 series did not contain the name Vettom Bankers and that of the complainant. I find that it is not specifically put to DW4 that the complainant is not running any chitty transaction. DW5, the father of the accused, has testified in support of the case set up by the accused. Of course, the court below has noted that the accused had attempted to create evidence by erasing address written in Ext. D8 certificate of posting by which Ext. D9 is said to have been sent to the complainant. According to DW2, the accused, he had issued letter demanding the return of the cheque vide Ext. D1 postal receipt and Ext. D2 postal acknowledgments. But the copy of the letter could not be produced. He has also stated that he had filed a complaint before the Circle Inspector of Police of the area and before the Revenue Minister vide Ext. D12. It is also noted by the court below that as can be seen from Ext. D3 ledger extract of the account of the accused the cheques having serial numbers 881,

882 and 883 were presented to the bank and encashed on 5.7.1995, 22.2.1996 and 29.7.1996 respectively. The impugned cheque is having the last digits as 884. Cheque Nos.885 and 886 were encashed on 30.12.1996 and 7.5.1998 respectively. The alleged borrowal in the instant case is on 5.2.1998 which is also the date of the cheque. I find that the above clearly shed light as to the truth of the case set up by the defence. It is unlikely that such a huge amount would have been given to a person in instalments without obtaining any document especially by a person who is running a finance out fit and also that the cheque having serial No.884 as last digits would have been kept away for issuing in October 1998. In view of the above evidence adduced in the matter, I find that there is no scope for interference in the finding of the court below.

The appeal is dismissed.

K.R.UDAYABHANU,
JUDGE

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